

Memorandum 94-30

1994 Legislative Program: Status of Bills

Attached to this memorandum is a chart showing the status of bills in the Law Revision Commission's 1994 legislative program. The Legislature has recessed for the month and is scheduled to reconvene August 8, with final recess beginning August 31.

This memorandum provides additional information on the status of the bills.

AB 2208 (Assembly Judiciary): Family Code Cleanup — 1994

This an omnibus family law bill that includes substantive proposals from several different sources, in addition to the Commission's technical amendments on the Family Code. There are problems with some of the substantive amendments and as a result the bill is in trouble. It is unclear at this point whether the problem areas can be worked out in time for enactment this session. If not, we will find another vehicle next session.

AB 3600 (Assembly Judiciary): Orders to Show Cause and Temporary Restraining Orders

This bill is an omnibus civil practice bill that includes the Commission's improvements in the OSC/TRO procedure. There are no problems on the bill and we expect it to be enacted.

SB 1868 (Campbell): Effect of Joint Tenancy Title on Marital Property

This bill is dead. The Commission has decided to continue to work on the problem. We expect to take it up at the September meeting.

SB 1907 (Campbell): Power of Attorney Law

This is the Commission's major recommendation in the 1994 legislative session. The bill is in good shape and is well on its way to enactment. We may publish the text of the measure as enacted with revised Commission comments in cooperation with the California Continuing Education of the Bar. This should be a useful publication for practitioners.

SCR 34 (Roberti): Continuing Authority to Study Topics [adds statute of limitations tolling issue]

This measure is noncontroversial and we expect it to be adopted without incident.

SCA 3 (Lockyer): Trial Court Unification

This measure is hung up in the Assembly. The main issue is the Voting Rights Act and electoral districts. Racial minority interests are concerned to preserve the ability of the Legislature to provide judicial election by district rather than countywide. Political minority interests are concerned that judicial electoral districts will be drawn unfairly by the majority party.

The measure has been amended twice in the past few weeks. The measure as amended June 22 is attached to this memorandum; it basically adopts the Law Revision Commission proposals, with some minor modifications. The measure was further amended July 5:

Judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law, in which case the Legislature, *by two-thirds vote of the membership of each house thereof*, with the advice of judges within the affected court, may provide for their election in electoral subdivisions of the affected court at general elections, by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

The measure as so amended was put to a vote in the Assembly on July 7 and failed by a margin of 41-26, with 13 not voting. Fifty-four votes are required for passage. We understand Senator Lockyer plans to continue to work on the measure and seek passage when the Legislature reconvenes in August.

The statutory deadline for getting legislative constitutional amendments on the November ballot was June 30. AB 2223 has been amended to provide that, "Notwithstanding Section 3525 of the Elections Code, the following measure shall appear on the November 8, 1994, general election ballot: SCA ____."

We will try to get a realistic assessment of the prospects for this measure so that we can make an appropriate allocation of the Commission's resources.

SB * (Lockyer): Trial Court Unification Transitional Provisions**

There are a number of possible vehicles for the SCA 3 transitional implementing legislation. However, Senator Lockyer's first priority is to obtain passage of SCA 3.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

STATUS OF 1994 COMMISSION LEGISLATIVE PROGRAM
(as of July 7, 1994)

AB 2208 (Assembly Judiciary): Family Code Cleanup —
1994

AB 3600 (Assembly Judiciary): Orders to Show Cause and
Temporary Restraining Orders

SB 1868 (Campbell): Effect of Joint Tenancy Title on Marital
Property

SB 1907 (Campbell): Power of Attorney Law

SCR 34 (Roberti): Continuing Authority to Study Topics
[adds statute of limitations tolling issue]

SCA 3 (Lockyer): Trial Court Unification

SB *** (Lockyer): Trial Court Unification Transitional
Provisions

Bill Status		AB 2208	AB 3600	SB 1868	SB 1907	SCR 34	SCA 3	SB ***
Introduced		1993	Feb 25	Feb 24	Feb 25	Feb 18	1993	1993
Last Amended		Jan 5	May 11		June 23	—	July 5	[TBA]
First House	Policy Committee	Jan 13	May 11		May 17	Mar 15	1993	1993
	Fiscal Committee	Jan 19	—		—	May 23	1993	1993
	Passed House	Jan 27	May 26		May 27	June 2	1993	1993
Second House	Policy Committee		[Aug 9]		June 15	June 29	1993	
	Fiscal Committee		—		—		1993	
	Passed House				June 29			
Concurrence					July 7			
Governor	Received					—	—	
	Approved					—	—	
Chaptered by Secretary of State	Date							
	Chapter #							

• Unless otherwise noted, all dates are in 1994

[date]: scheduled

—: not applicable

AMENDED IN ASSEMBLY JUNE 22, 1994

AMENDED IN ASSEMBLY JULY 16, 1993

AMENDED IN SENATE APRIL 13, 1993

Senate Constitutional Amendment

No. 3

Introduced by Senator Lockyer

~~(Principal coauthors: Assembly Members Isenberg and Goldsmith)~~

(Principal coauthor: Assembly Member Isenberg)

December 7, 1992

Senate Constitutional Amendment No. 3—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending *Section 16 of Article I thereof, and by amending Sections 1, 4, 6, 8, 10, 11, 15, and 16 of, adding and repealing Section 16.5 23 of, and repealing Section 5 of, Article VI thereof, relating to District Courts courts.*

LEGISLATIVE COUNSEL'S DIGEST

SCA 3, as amended, Lockyer. ~~District courts: creation~~
Courts: consolidation.

The California Constitution currently provides for superior, municipal, and justice courts, provides for the establishment and jurisdiction thereof, and provides for the qualification and election of judges thereof.

This measure would eliminate the provisions for superior, municipal, and justice courts, and instead ~~provide for district~~ *revise the provisions for the superior courts, their establishment and jurisdiction, the number of jurors required in certain civil actions, and the qualification and election of judges thereof.* The measure would become operative on July 1, ~~1995~~ 1996. The measure would also specify its purposes, and

make related, conforming changes. *The measure would also declare that its provisions are severable.*

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

1 *Resolved by the Senate, the Assembly concurring, That*
 2 the Legislature of the State of California at its 1993-94
 3 Regular Session commencing on the seventh day of
 4 December 1992, two-thirds of the members elected to
 5 each of the two houses of the Legislature voting therefor,
 6 hereby proposes to the people of the State of California
 7 that the Constitution of the State be amended as follows:

8 *First—That Section 16 of Article I is amended to read:*

9 SEC. 16. Trial by jury is an inviolate right and shall be
 10 secured to all, but in a civil cause three-fourths of the jury
 11 may render a verdict. A jury may be waived in a criminal
 12 cause by the consent of both parties expressed in open
 13 court by the defendant and the defendant's counsel. In a
 14 civil cause a jury may be waived by the consent of the
 15 parties expressed as prescribed by statute.

16 In civil causes the jury shall consist of 12 persons or a
 17 lesser number agreed on by the parties in open court. In
 18 civil causes ~~in municipal or justice court other than~~
 19 *causes within the appellate jurisdiction of the court of*
 20 *appeal* the Legislature may provide that the jury shall
 21 consist of eight persons or a lesser number agreed on by
 22 the parties in open court.

23 In criminal actions in which a felony is charged, the
 24 jury shall consist of 12 persons. In criminal actions in
 25 which a misdemeanor is charged, the jury shall consist of
 26 12 persons or a lesser number agreed on by the parties in
 27 open court.

28 ~~First—That~~

29 *Second—That Section 1 of Article VI is amended to*
 30 read:

31 SEC. 1. The judicial power of this State is vested in
 32 the Supreme Court, courts of appeal, and ~~district courts.~~
 33 ~~All courts superior courts, all of which are courts of~~
 34 record.

35 ~~Second—That~~

1 *Third—That* Section 4 of Article VI is amended to read:
2 SEC. 4. In each county there is a ~~district superior~~
3 court of one or more judges. The Legislature shall
4 prescribe the number of judges and provide for the
5 officers and ~~employees of each district court.~~ The
6 Legislature may provide that one or more judges serve
7 ~~more than one district court, or that two or more district~~
8 ~~courts may be organized into one or more circuits for~~
9 ~~regional resource sharing or administrative purposes.~~

10 The Legislature may divide the district court into one
11 or more branches.

12 The county clerk is *ex officio* clerk of the district court
13 in the county.

14 ~~Third—That~~ *employees of each superior court. If the*
15 *governing body of each affected county concurs, the*
16 *Legislature may provide that one or more judges serve*
17 *more than one superior court.*

18 *In each superior court there is an appellate division.*
19 *The Chief Justice shall assign judges to the appellate*
20 *division for specified terms pursuant to rules, not*
21 *inconsistent with statute, adopted by the Judicial Council*
22 *to promote the independence of the appellate division.*

23 *Fourth—That* Section 5 of Article VI is repealed.

24 ~~Fourth—That~~

25 *Fifth—That* Section 6 of Article VI is amended to read:

26 SEC. 6. The Judicial Council consists of the Chief
27 Justice and one other judge of the Supreme Court, 3
28 judges of courts of appeal, and 10 judges of district courts,
29 each appointed by the Chief Justice for a 2-year term; 4
30 members of the State Bar appointed by its governing
31 body for 2-year terms; and one member of each house of
32 the Legislature appointed as provided by the house.
33 judges of courts of appeal, 10 judges of superior courts, 2
34 nonvoting court administrators, and such other
35 nonvoting members as determined by the voting
36 membership of the council, each appointed by the Chief
37 Justice for a 3-year term pursuant to procedures
38 established by the council; 4 members of the State Bar
39 appointed by its governing body for 3-year terms; and
40 one member of each house of the Legislature appointed

1 *as provided by the house.*

2 Council membership terminates if a member ceases to
3 hold the position that qualified the member for
4 appointment. A vacancy shall be filled by the appointing
5 power for the remainder of the term.

6 The council may appoint an Administrative Director of
7 the Courts, who serves at its pleasure and performs
8 functions delegated by the council or the Chief Justice,
9 other than adopting rules of court administration,
10 practice and procedure.

11 To improve the administration of justice the council
12 shall survey judicial business and make recommendations
13 to the courts, make recommendations annually to the
14 Governor and Legislature, adopt rules for court
15 administration, practice and procedure, ~~not inconsistent~~
16 ~~with statute~~, and perform other functions prescribed by
17 statute. *The rules adopted shall not be inconsistent with*
18 *statute.*

19 The Chief Justice shall seek to expedite judicial
20 business and to equalize the work of judges. The Chief
21 Justice may provide for the assignment of any judge to
22 another court but only with the judge's consent if the
23 court is of lower jurisdiction. A retired judge who
24 consents may be assigned to any court.

25 Judges shall report to the ~~Judicial Council~~ *council* as
26 the Chief Justice directs concerning the condition of
27 judicial business in their courts. They shall cooperate with
28 the council and hold court as assigned.

29 ~~Fifth—That~~

30 ~~Sixth—That~~ Section 8 of Article VI is amended to read:

31 SEC. 8. (a) The Commission on Judicial
32 Performance consists of 2 judges of courts of appeal, and
33 3 judges of ~~district~~ *superior* courts, each appointed by the
34 Supreme Court; 2 members of the State Bar of California
35 who have practiced law in this State for 10 years,
36 appointed by its governing body; and 2 citizens who are
37 not judges, retired judges, or members of the State Bar of
38 California, appointed by the Governor and approved by
39 the Senate, a majority of the membership concurring.
40 ~~Except as provided in subdivision (b), all terms are 4 All~~

1 *terms are 4 years.* No member shall serve more than 2
2 4-year terms.

3 ~~Commission~~

4 *(b) Commission* membership terminates if a member
5 ceases to hold the position that qualified the member for
6 appointment. A vacancy shall be filled by the appointing
7 power for the remainder of the term. A member whose
8 term has expired may continue to serve until the vacancy
9 has been filled by the appointing power.

10 ~~(b) To create staggered terms among the members of~~
11 ~~the Commission on Judicial Performance, the following~~
12 ~~members shall be appointed, as follows:~~

13 ~~(1) The court of appeal member appointed to~~
14 ~~immediately succeed the term that expires on November~~
15 ~~8, 1988, shall serve a 2-year term.~~

16 ~~(2) Of the State Bar members appointed to~~
17 ~~immediately succeed terms that expire on December 31,~~
18 ~~1988, one member shall serve for a 2-year term.~~

19 ~~Sixth—That~~

20 ~~Seventh—That~~ Section 10 of Article VI is amended to
21 read:

22 SEC. 10. The Supreme Court, courts of appeal,
23 ~~district superior~~ courts, and their judges have original
24 jurisdiction in habeas corpus proceedings. Those courts
25 also have original jurisdiction in proceedings for
26 extraordinary relief in the nature of mandamus,
27 certiorari, and prohibition. *The appellate division of the*
28 *superior court has original jurisdiction in proceedings for*
29 *extraordinary relief in the nature of mandamus,*
30 *certiorari, and prohibition directed to the superior court*
31 *in causes subject to its appellate jurisdiction.*

32 ~~District~~

33 *Superior* courts have original jurisdiction in all *other*
34 causes.

35 The court may make such comment on the evidence
36 and the testimony and credibility of any witness as in its
37 opinion is necessary for the proper determination of the
38 cause.

39 ~~Seventh—That~~

40 ~~Eighth—That~~ Section 11 of Article VI is amended to

1 read:

2 SEC. 11. (a) The Supreme Court has appellate
3 jurisdiction when judgment of death has been
4 pronounced. With that exception courts of appeal have
5 appellate jurisdiction when ~~district courts have original~~
6 ~~jurisdiction and in other causes prescribed by statute.~~

7 An appellate division shall be created within each
8 district court. The appellate division has appellate
9 jurisdiction in causes prescribed by statute that arise
10 within that district court.

11 The Legislature may permit appellate courts to take
12 evidence and make findings of fact when jury trial is
13 waived or not a matter of right. superior courts have
14 original jurisdiction in causes of a type within the
15 appellate jurisdiction of the courts of appeal on June 30,
16 1994, and in other causes prescribed by statute. When
17 appellate jurisdiction in civil causes is determined by the
18 amount in controversy, the Legislature may change the
19 appellate jurisdiction of the courts of appeal by changing
20 the jurisdictional amount in controversy.

21 (b) Except as provided in subdivision (a), the
22 appellate division of the superior court has appellate
23 jurisdiction in causes prescribed by statute.

24 (c) The Legislature may permit courts exercising
25 appellate jurisdiction to take evidence and make findings
26 of fact when jury trial is waived or not a matter of right.

27 ~~Eighth—That~~

28 ~~Ninth—That~~ Section 15 of Article VI is amended to
29 read:

30 SEC. 15. A person is ineligible to be a judge of a court
31 of record unless for 10 years immediately preceding
32 selection to a district court or 10 years immediately
33 preceding selection to other courts, the person has been
34 a member of the State Bar or served as a judge of a court
35 of record in this State. A judge eligible for district court
36 service may be assigned by the Chief Justice to serve on
37 any court.

38 ~~Ninth—That~~ selection the person has been a member
39 of the State Bar or served as a judge of a court of record
40 in this state.

1 *Tenth*—That Section 16 of Article VI is amended to
2 read:

3 SEC. 16. (a) Judges of the Supreme Court shall be
4 elected at large and judges of courts of appeal shall be
5 elected in their districts at general elections at the same
6 time and places as the Governor. Their terms are 12 years
7 beginning the Monday after January 1 following their
8 election, except that a judge elected to an unexpired
9 term serves the remainder of the term. In creating a new
10 court of appeal district or division the Legislature shall
11 provide that the first elective terms are 4, 8, and 12 years.

12 (b) Judges of ~~other~~ superior courts shall be elected in
13 their ~~districts or branches at general elections~~. The
14 ~~Legislature~~ *counties at general elections except as*
15 *otherwise necessary to meet the requirements of federal*
16 *law, in which case the Legislature, with the advice of*
17 *judges within the affected court, may provide for their*
18 *election in electoral subdivisions of the affected court at*
19 *general elections, by the system prescribed in subdivision*
20 *(d), or by any other arrangement. The Legislature may*
21 provide that an unopposed incumbent's name not appear
22 on the ballot.

23 (c) Terms of judges of ~~district~~ superior courts are 6
24 years beginning the Monday after January 1 following
25 their election. A vacancy shall be filled by election to a
26 full term at the next general election after the *second*
27 January 1 following the vacancy, but the Governor shall
28 appoint a person to fill the vacancy temporarily until the
29 elected judge's term begins.

30 (d) Within 30 days before August 16 preceding the
31 expiration of the judge's term, a judge of the Supreme
32 Court or a court of appeal may file a declaration of
33 candidacy to succeed to the office presently held by the
34 judge. If the declaration is not filed, the Governor before
35 September 16 shall nominate a candidate. At the next
36 general election, only the candidate so declared or
37 nominated may appear on the ballot, which shall present
38 the question whether the candidate shall be elected. The
39 candidate shall be elected upon receiving a majority of
40 the votes on the question. A candidate not elected may

1 not be appointed to that court but later may be
2 nominated and elected.

3 The Governor shall fill vacancies in those courts by
4 appointment. An appointee holds office until the Monday
5 after January 1 following the first general election at
6 which the appointee had the right to become a candidate
7 or until an elected judge qualifies. A nomination or
8 appointment by the Governor is effective when
9 confirmed by the Commission on Judicial Appointments.

10 Electors of a county, by majority of those voting and in
11 a manner the Legislature shall provide, may make this
12 system of selection applicable to judges of ~~district~~
13 *superior* courts.

14 ~~Tenth—That Section 16.5 is added to Article VI to read:~~

15 **SEC. 16.5.** ~~The purpose of the repeal of Section 5, and~~
16 ~~the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and 16,~~
17 ~~of this article, adopted at the June 1994 primary election~~
18 ~~is to convert each superior, municipal, and justice court~~
19 ~~to a district court.~~

20 ~~In each former superior, municipal, and justice court~~
21 ~~district, the previously selected judges, officers, and~~
22 ~~employees shall become the judges, officers, and~~
23 ~~employees of the district court; each preexisting superior,~~
24 ~~municipal, and justice court location shall be retained as~~
25 ~~a district court location; pending actions, trials,~~
26 ~~proceedings, and other business of the preexisting court~~
27 ~~shall become pending in the district court; and the~~
28 ~~records of the preexisting court shall become records of~~
29 ~~the district court.~~

30 ~~The terms of office of the judges of the preexisting~~
31 ~~superior, municipal, and justice courts shall not be~~
32 ~~affected by their succession to office as district court~~
33 ~~judges.~~

34 ~~This section shall be operative only until January 1,~~
35 ~~2000, and as of that date is repealed.~~

36 ~~Eleventh—That this measure shall become operative~~
37 ~~on July 1, 1995.~~

38 ~~Eleventh—That Section 23 is added to Article VI to~~
39 ~~read:~~

40 **SEC. 23.** (a) *The purpose of the repeal of Section 5,*

1 and the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and
2 16, of this article, and the amendments to Section 16 of
3 Article I, approved at the November 8, 1994, general
4 election is to abolish the municipal and justice courts and
5 unify their operations within the superior courts.
6 Notwithstanding Section 8 of Article IV, the
7 implementation of, and orderly transition under, the
8 provisions of the measure adding this section may include
9 urgency statutes that create or abolish offices or change
10 the salaries, terms, or duties of offices, or grant franchises
11 or special privileges, or create vested rights or interests,
12 where otherwise permitted under this Constitution.

13 (b) On July 1, 1996, the judgeships in each municipal
14 and justice court in a county are abolished and the
15 previously selected municipal and justice court judges
16 shall become judges of the superior court in that county.
17 The term of office of a previously selected municipal or
18 justice court judge is not affected by taking office as a
19 judge of the superior court. The 10-year membership or
20 service requirement of Section 15 does not apply to a
21 previously selected municipal or justice court judge.
22 Pursuant to Section 6, the Judicial Council may prescribe
23 appropriate education and training for judges with
24 regard to trial court unification.

25 (c) Subject to contrary action pursuant to statute, on
26 July 1, 1996, in each preexisting superior, municipal, and
27 justice court:

28 (1) Previously selected officers, employees, and other
29 personnel who serve the court become the officers and
30 employees of the superior court.

31 (2) Preexisting court locations are retained as superior
32 court locations.

33 (3) Preexisting court records become records of the
34 superior court.

35 (4) Pending actions, trials, proceedings, and other
36 business of the court become pending in the superior
37 court under the procedures previously applicable to the
38 matters in the court in which the matters were pending.

39 (5) Matters of a type previously within the appellate
40 jurisdiction of the superior court remain within the

1 *jurisdiction of the appellate division of the superior court.*
2 *(6) Matters of a type previously subject to rehearing*
3 *by a superior court judge remain subject to rehearing by*
4 *a superior court judge, other than the judge who*
5 *originally heard the matter.*

6 *(7) Penal Code procedures that necessitate superior*
7 *court review of, or action based on, a ruling or order by*
8 *a municipal or justice court judge or a magistrate shall be*
9 *performed by a superior court judge other than the judge*
10 *or magistrate who originally made the ruling or order.*

11 *(d) This section shall be operative until January 1,*
12 *2002, and as of that date is repealed.*

13 *Twelfth—That Sections 1 to 10, inclusive, of this*
14 *measure shall become operative on July 1, 1996.*

15 *Thirteenth—That if any provision of this measure or its*
16 *application to any person or circumstance is held invalid,*
17 *the invalidity does not affect other provisions or*
18 *applications of this measure that can be given effect*
19 *without the invalid provision or application, and to this*
20 *end the provisions of this measure are severable.*